Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

No. 77-324

SIDNEY S. HICKLIN, RUBY E. DORMAN, BETTY CLOUD, TOMMY RAY WOODRUFF, FREDERICK A. MATHERS, HARRY A. BROWNING, EMMETT RAY, and JOSEPH G. O'BRIEN,

*Appellants,*

*v.*

EDMUND ORBECK, Commissioner of the Department of Labor of the State of Alaska, and GUY RICHARD MARTIN, Commissioner of the Department of Natural Resources of the State of Alaska,

*Appellees.*

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF ALASKA

## APPELLEES' OBJECTION TO MOTION OF THE NATIONAL RIGHT TO WORK LEGAL DEFENSE FOUNDATION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE*

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## STATEMENT OF OBJECTION

The *Motion for Leave to File Brief Amicus Curiae on Behalf of the National Right to Work Legal Defense Foundation, Urging Reversal* was received in the office of the Attorney General for the State of Alaska on January

4, 1978. The undersigned, counsel for appellees, was out of state at the time the *Motion,.etc.* was received and did not learn of it or have an opportunity to review it until January 9, 1978.

Although the undersigned had originally expressed his consent to counsel for the National Right to Work Legal Defense Foundation (hereinafter the "Foundation") to file a brief *amicus curiae* in this case, that consent was based on the assumption that the matters argued in the brief *amicus curiae* would be limited to those issues which had been raised by the parties in this case before the Alaska Supreme Court. It is apparent from even a cursory review of the Foundation's offered brief, however, that the scope of the issues proposed to be raised by it goes far beyond that limitation. Therefore, we feel compelled to object, pursuant to Rule 42.3 of the Rules of the Supreme Court of the United States, to the Foundation's *Motion for Leave to File Brief Amicus Curiae.*

The offered brief of the Foundation raises issues neither raised nor pressed by the appellants in the Court below. These issues include an asserted fundamental right to the "freedom of contract" under the Thirteenth Amendment to the United States Constitution and asserted interference with the free flow of labor in interstate commerce, in violation of the Commerce Clause. The Alaska Supreme Court had not been presented with those issues when it decided this case, 565 P.2d 159 (1977); nor was it presented with a factual record which would have permitted it to do so.*

This Court has made it clear that it will not under-

*For instance, had the issue of Alaska Hire's interfering with interstate commerce been raised at the trial court level, evidence would have been necessary to establish to what extent, if at all, Alaska Hire imposed a burden on a proper subject of interstate commerce.



take to review that which a Court below did not decide. *Walters v. St. Louis,* 347 U.S. 231, 233, 98 L.Ed. 660, 74 S. Ct. 505 (1954). The offered brief of the Foundation proposes that the Court do precisely that, however, and it is for this reason that we object to the Foundation's *Motion for Leave to File Brief Amicus Curiae* and respectfully request that it be denied by this Court. The Foundation must simply wait until a case properly presenting the issues it seeks to raise comes along.

DATED: _____

Respectfully submitted,

By:
/s/ Ronald W. Lorensen
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